IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

WA.No. 1356 of 2007

AGAINST THE ORDER IN WPC.12528/2007 Dated 08/06/2007
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APPELLANT: PETITIONER:
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1. JAMES K.J., S/O. K.P.JOHN,
   CHITHIRA BHAVAN, PALLOT, AJANUR P.O., KANHANGAD,
   KASARGOD DISTRICT.

2. VALSAN V.K.,
   VADASSERYIL HOUSE, NELLAD P.O., MOOVATTUPUZHA,
   ERNAKULAM DISTRICT.

BY ADV. SRI.P.RAVINDRAN

RESPONDENTS: RESPONDENTS:
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1. GOVERNMENT OF KERALA,
   REP. BY SECRETARY DEPARTMENT OF TRANSPORT,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. TRANSPORT COMMISSIONER,
   GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

3. KERALA PUBLIC SERVICE COMMISSION,
   PATTOM P.O., THIRUVANANTHAPURAM, REP. BY ITS
   SECRETARY.

4. C.R. RADHAKRISHNAN,
   UPPER DIVISION CLERK, OFFICE OF THE
   REGIONAL TRANSPORT OFFICE, KAKKANAD, ERNAKULAM.

5. G.S. BAIJU,
   UPPER DIVISION CLERK,TRANSPORT COMMISSIONER OFFICE
   THIRUVANANTHAPURAM.

6. K.S.RAJKUMAR,
KRISHNA SADANAM, CHENGERY, KADACKEL,
PULIPARA P.O., KOLLAM.

7. AJMALKHAN T.K.,
LOWER DIVISION CLERK, OFFICE OF THE
REGIONAL TRANSPORT OFFICE, ERNAKULAM.

R3 BY ADV. SRI.P.C.SASIDHARAN, STANDING COUNSEL, KPSC
R4 & R7 BY ADV. SRI.KRB.KAIMAL (SR.)
SRI.B.UNNIKRISHNA KAIMAL
R1 & R2 BY GOVT PLEADER SRI BENNY GERVASIZ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 18/08/2007, ALONG WITH WA NO. 1643 OF 2007
WPC NO. 12528 OF 2007 THE COURT ON 18/08/2007
DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

Writ Appeal Nos. 1356 and 1643 of 2007
and
W.P.C. No 12528 of 2007

Dated: 18th August 2007

JUDGMENT

Radhakrishnan, J.

Common questions arise for consideration in all these cases and hence we are disposing of these cases by a common judgment.

2. Petitioners in all these cases were included in the rank list published by the Kerala Public Service Commission for appointment to the post of Assistant Motor Vehicle Inspector in the Motor Vehicles Department. Rank list was published on 06.12.2005 and it has got validity of three years. Appointment to the post of Assistant Motor Vehicle Inspector is governed by the Special Rules for the Kerala Transport Subordinate Service Rules. Method of appointment to the post of Assistant Motor Vehicle Inspector is by direct recruitment or by transfer from among members of the ministerial service in the Motor Vehicles Department.

Appointment by transfer and direct recruitment is made in the ratio of 1 : 4 taking into account the total cadre strength of Assistant Motor Vehicle Inspectors in the department. Rules also provide that if qualified hands are not available for recruitment by transfer those posts should be filled by direct recruitment. Petitioners submit that even though they are included in the rank list for appointment to the post of Assistant Motor Vehicle Inspectors, vacancies are not being reported to the Public Service Commission since most of the vacancies are occupied by unqualified hands in the department. Enquiry reveled that about 60 Assistant Motor Vehicle Inspectors who got appointment by transfer are not qualified to get appointment by transfer and consequently persons who are included in the P.S.C rank list are not being advised by the Public Service Commission due to non reporting of vacancies. Petitioners have therefore approached this court seeking a direction to respondents 1 and 2 to revert members of the the ministerial staff holding the posts of Assistant Motor Vehicle Inspector by transfer illegally so as to operate the rank list prepared by the Public Service Commission.

3. The contesting respondents resisted the claim raised by the petitioners and submitted that as per the Special Rules there is no requirement that working experience should be obtained as paid employee

in workshops or that it should be full time working experience. It is pointed out that many of the persons working as L.D.Cs/U.D.Cs have got sufficient qualification for appointment by transfer as Assistant Motor Vehicle Inspector strictly as per rules and there is no justification in reverting them so as to accommodate P.S.C hands. Sri K.R.B. Kaimal, Senior Counsel appearing for the contesting respondents submitted that contesting respondents possess the qualification prescribed in the Special Rules and stated that Ext. P2 notification which did not prescribe working experience. Further it is also pointed out that it is entirely for the Government to decide as to whether the respondents satisfy the qualification or not. After having found that contesting respondents are qualified and eligible they were appointed by transfer to the post of Assistant Motor Vehicle Inspectors.

4. Counter affidavit has been filed on behalf of second respondent in W.P.C. No 12528 of 2007 stating that the Central Government notification dated 12.06.1989 does not prescribe that working experience should be acquired as a paid employee. Further it is also stated that as per the judgment in W.P.C. No 2677 of 2006 Secretary to Government, Transport Department and Transport Commissioner have been directed to provide a criteria and guidelines in the matter of qualification of working experience.

Consequently communications dated 03.05.2007 and 05.05.2007 were already issued by the Secretary to Government to the Transport Commissioner explaining the position.

5. We find that a Division Bench of this court has elaborately considered the scope of the notification issued by the Central Government under Section 213 (4) of the Motor Vehicles Act, 1988 read with rule 10 (ab) of the Kerala State and Subordinate Services Rules, 1959 in Sirajudheen v. Kerala Public Service Commission (2001 (2) KLT 268). The Bench took the view that for appointment to the post of Assistant Motor Vehicle Inspector, requirement of working experience should be gained after acquisition of the basic qualification which is a mandatory requirement. Against the said judgment Special Leave Petition was filed before the apex court and the same was dismissed. The fact that contesting respondents should conform to the qualification prescribed by the Central Government under Section 213(4) of the Motor Vehicles Act as well as the qualification prescribed under Rule 10 (ab) of the K.S. & S.S.R is undisputed. Notification dated 12.06.1989 issued under Section 213(4) of the Act by the Central Government refers to working experience, which is extracted hereunder for easy reference.

> "(3) working experience of at least one year in a reputed automobile workshop which undertakes repairs of both light motor vehicles, heavy goods vehicles and heavy passenger motor vehicles fitted with petrol and diesel engine"

Rule 10 (ab) of the Kerala State and Subordinate Service Rules states that where the Special Rules or Recruitment Rules for a post in any service prescribe qualification of experience, it shall, unless otherwise specified, be one gained by persons on temporary or regular appointment to capacities other than paid or unpaid apprentices, trainees and casual labourers in Central or State Government service or in Public Sector Undertaking or Registered Private Sector Undertaking, after acquiring the basic qualification prescribed for the post. Proviso to the above rule states that the experience gained as factory workers on daily wages of a permanent nature may be accepted, if the service is continuous and not of a casual nature. On a reading of the Central Government notification dated 12.06.1989 along with Rule 10 (ab) it is clear that working experience should be obtained from a reputed automobile workshop (registered with Government), Public Sector Undertaking or Registered Private Sector Undertaking and too after the acquisition of basic qualification prescribed for the post.

6. We are of the view, only those persons who satisfy the above

mentioned qualifications as clarified by the Government in the communication dated 05.05.2007 addressed to the Transport Commissioner are eligible to be appointed as Assistant Motor Vehicle Inspector by transfer from ministerial service. Contesting respondents could not produce any material to establish that they have got the prescribed working experience. Further contesting respondents would not have gained such working experience while in service without getting permission from the Government. Rule 48 of the Government Servants' Conduct Rules says that no government servant shall, except with the previous sanction of the Government, engage directly or indirectly in any trade or business or undertake any employment. Above being the factual and legal position, we are of the view that the relief claimed by the petitioners are to be granted. We are therefore inclined to allow the appeals as well as the writ petition and set aside the judgment of the learned single judge and issue a writ of mandamus directing respondents 1 and 2 tor revert those Assistant Motor Vehicle Inspectors who are appointed by transfer from among members of ministerial staff of the Department who do not possess one year working experience as qualification prescribed under the Special Rules. The Government would pass orders as directed above within a period of one month from the date of receipt of a copy of this judgment. Resultant

vacancies should be reported to the Public Service Commission forthwith and the Public Service Commission should advise candidates included in the rank list. Writ appeals and writ petition are accordingly allowed as above.

Sd/-
K.S. RADHAKRISHNAN
Judge

Sd/-
ANTONY DOMINIC
Judge

18/08/2007
en/

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